

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JOSEPHINE LINKER HART, JUDGE

DIVISION II

CACR07-487

January 23, 2008

LAMONT ANDREW HICKS

APPELLANT

APPEAL FROM THE GARLAND  
COUNTY CIRCUIT COURT  
[NO. CR-06-107-4]

V.

HONORABLE MARCIA RENAUD  
HEARNSBERGER, CIRCUIT JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

JOSEPHINE LINKER HART

A jury found appellant, Lamont Andrew Hicks, guilty of possession of a controlled substance with the intent to deliver, and he was sentenced to 360 months' imprisonment. For his only point on appeal, he argues that the evidence was insufficient to support his conviction. His argument, however, was not preserved for appellate review. Accordingly, we affirm.

Appellant did not make a motion for a directed verdict at either the close of the evidence offered by the State or at the close of all the evidence. Rule 33.1 of the Arkansas Rules of Criminal Procedure provides that "[i]n a jury trial, if a motion for directed verdict is to be made, it shall be made at the close of the evidence offered by the prosecution and at

the close of all of the evidence,” and “[t]he failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required ... will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict or judgment.”

Our supreme court has observed that the language in Rule 33.1 is stated in the conjunctive, requiring that a motion for directed verdict be made at the close of the State’s case and again at the close of all of the evidence. *Grady v. State*, 350 Ark. 160, 85 S.W.3d 531 (2002). The court has further stated that the failure to challenge the sufficiency of the evidence at both the close of the State’s case and the close of all of the evidence will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the jury verdict on appeal. *Id.* Rule 33.1 is strictly construed *Id.* Accordingly, appellant’s failure to move for a directed verdict at the close of the State’s case and the close of all the evidence precludes him from challenging the sufficiency of the evidence on appeal.

Affirmed.

HEFFLEY and MILLER, JJ., agree.